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ABSTRACT

By focusing on the necessary stages and features of a staff-change policy, this manual assists local school boards and administrators in planning for reductions in staff and layoffs. It first reviews statutory authority held by boards and administrators in reducing the number of school employees and defines key terms used in the discussion of personnel policy guidelines. Major considerations in developing a reduction-in-force or layoff policy are then specified for several contingencies: when districts have no such policies in collective bargaining agreements; when they must revise their agreements; when a policy is being initiated; and when a policy is made to cover employees not in a bargaining unit. After noting general features necessary to any reduction-in-force or layoff policy, the specific details of a plan are grouped to determine the need in the district, decide on positions to be eliminated, organize the force reduction, and recall employees. Readers are advised throughout, however, that this manual is no substitute for legal advice. (JW)

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SUGGESTED PERSONNEL POLICY GUIDELINES FOR SCHOOL DISTRICTS

REDUCTION IN FORCE — LAYOFF AND RECALL 1983

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EA 016 765

REDUCTION IN FORCE--LAYOFF AND RECALL

Revised
January 1983

Verne A. Duncan
State Superintendent of Public Instruction

Oregon Department of Education
700 Pringle Parkway SE
Salem, Oregon 97310

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FOREWORD

Education aims to offer the best programs possible; to do so, personnel need clear guidelines as to what to expect in the affairs of management.

The passage of time brings changes to the operation and management of Oregon school districts. The 1981 Oregon Legislature modified the statutes to provide the procedures to be used by school districts faced with reduction in force, as well as procedures for laying off employees and recalling those who have been laid off.

Reduction in Force--Layoff and Recall, Revised 1983, is one in a series of publications on personnel practices developed by the Personnel Management Advisory Committee and published by the Oregon Department of Education. It is designed to assist local school boards and administrators when planning for any change in staff size.

Special thanks to the Personnel Management Advisory Committee, especially the subcommittee, chaired by Steve Wisely, who worked on this revised publication. For more information, contact Milt Baum, Associate Superintendent, Office of School District Services, 378-4772, or George Martin, Department Consultant, 373-7172, or toll free in Oregon 1-800-452-7813.

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INTRODUCTION

This publication focuses on issues involved when a district must lay off, recall, or reduce the number of employees, certificated or classified, either during or at the end of the school year. It includes suggestions for planning procedures to follow in handling each situation. There is general reference to Oregon community colleges, but the statutes do not apply directly to these institutions.

The need for reduction in force (RIF) or layoff and recall faces many school districts in Oregon. A plan should be developed in a nonemotional setting and before any crisis occurs. Some Oregon school districts have bargained layoff and recall or reduction in force provisions in contract agreements, some have developed other plans, and others may not yet have plans or provisions for dealing with these issues. Staff consultation on these procedures is required. Oregon Revised Statute 342.934 refers to teachers, but it is suggested that all classified employees be treated in the same manner.

This publication is a revision of a 1977 PMAC document, Reduction in Force and the 1981 revision - Reduction in Force - Layoff and Recall. Another 1977 PMAC publication, Forced School Closure, deals in depth with closures brought about for a number of reasons.

AUTHORITY

The local school district has the authority and should consider providing for reduction in force and layoff:

- Constitution of the State of Oregon, Article XI, Section 11, provides for a six percent limitation on increases in approved taxes without a vote of the people.
- ORS 294.326 - Compliance with Local Budget Law is required prior to expenditure or tax levy; exception: "Except as provided . . . it is unlawful for any municipal corporation to expend money or to levy a tax in any year upon property subject to taxation unless the municipal corporation has complied with the provisions of ORS 294.305 to 294.529." (Local Budget Law)
- ORS 332.107 - "Each district school board may establish rules for the government of the schools and pupils consistent with the rules of the State Board of Education."
- ORS 332.535 - "All school districts shall maintain written personnel policies."

DEFINITIONS

The following definitions apply to this publication.

Administrative Rule (Oregon Administrative Rule--OAR) - an agency directive, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency; adopted by the agency's governing authority, filed with and published by the Secretary of State.

Administrator - any employee, the majority of whose employed time is devoted to service as a supervisor, principal, vice principal or director of a department or the equivalent, or a superintendent, deputy superintendent, or assistant superintendent of any district, whose duties and job descriptions assigned by the district involve the implementation of policies and the coordination of planning, instruction or support services of the district, and who holds an Oregon administrative certificate if required for the position. (See "District Administrator.")

Affirmative Action - district policy and implementation procedures adopted by the Board to meet the federal and state statutes and regulations regarding the employment, promotion and retention of employees, without regard to race, national origin, religion, sex, age, handicap, or marital status.

Board - one of the following, usually identified in context:

1. District school board is the board of directors of a fair dismissal school district.

2. Education Service District board is the board of directors of an ESD.

3. State Board of Education, or state board, is the body that establishes state rules (OAR) for the administration and operation of Oregon's public elementary and secondary schools, education service districts and community colleges.

Certificated Employees - district personnel required to hold teaching certificates and endorsements as required by the position descriptions of the district.

Classified Employees - district support personnel not required to hold a teaching certificate.

Collective Bargaining - the performance of the legal obligation of a public employer and the representative of its employees to meet at reasonable times and confer in good faith with respect to employment relations, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party. However, this obligation does not compel either party to agree to a proposal or require making of a concession.

Competence - the ability to teach a subject or grade level based on recent teaching experience or educational attainments, or both, but not based solely on being certificated to teach a subject or grade level.

District - a school or education service district.

District Administrator - the chief administrative officer of a fair dismissal school district, usually a superintendent. Small school districts without such a certificated employee may name one to carry out the provisions of the personnel rules and regulations imposed on the district through Oregon laws. (See "Administrator.")

Eliminating a Position - occurs when a district determines that a change in program or services permanently eliminates a position.

Equal Opportunity - policies and implementation plans for the district, adopted by the school board, through which equal employment (affirmative action) and equal educational opportunities are assured all persons, without regard for race, national origin, religion, sex, age, handicap, or marital status.

Goal - statement of purpose that has been formally accepted by an organization to guide action.

Grievance - an act or condition thought to be unjust and grounds for a complaint, as defined in district bargaining agreements.

Job Description - a statement by the local school district describing a particular assignment in some detail; e.g., English teacher, elementary school principal or secretary for a high school. (See "Position Description.")

Layoff* - a process for the temporary or indefinite separation from employment of employees who retain certain seniority and other contractual protections.

Merit - is the measurement of one teacher's ability and effectiveness against the ability and effectiveness of another teacher.

Oregon Revised Statutes (ORS) - laws passed by the Oregon State Legislature, as amended at any regular or special session.

Permanent Teacher/Administrator - one employed not less than half time who has been regularly employed by a fair dismissal district for a period of not less than three successive years, and who has been reelected after the completion of such three-year period for the next succeeding school year. Employment in the first probationary year shall be at least 135 consecutive days. (See ORS 342.840.)

Personnel Policies - those portions of local school district written policies which relate to personnel management established by board action.

Policy - a planned statement, adopted by the local school board, through which it states a position, intent or belief about a matter for which it has a responsibility.

Position Description - a statement by the local school district board, showing general employee relations, roles or functions, work duties and responsibilities and qualifications, for a class of employees who perform similar tasks; e.g., a teacher or a secretary. (See "Job Description.")

Probationary Teacher/Administrator - one employed by a fair dismissal district, who is not a permanent teacher.

Recall - the procedure followed by employers for the return of individuals who have been laid off.

*NOTE Layoff and RIF are frequently used interchangeably. In How Arbitration Works, Frank and Edna Elkouri state that ". . . the term 'layoff' must be interpreted to include any suspension from employment arising out of a reduction in the work force. . . ." Robert's Dictionary of Industrial Relations defines a reduction in work force as a layoff. RIF does not intend permanency when initially implemented.

Reduction in Force (RIF)* - a process by which a local district administration and board proceed in an orderly manner to reduce the number of employees.

Regulation - processes designed to implement a policy statement of a governing body, adopted by that body for the direction of employees and other affected persons or groups.

Rule - processes of the district administration regarding the implementation of a board policy or regulation, which is placed in writing and disseminated to all affected and interested parties.

Seniority - as determined through collective bargaining or otherwise as determined by board policies.

Teachers - all employees in the public schools who have direct responsibility for instruction including administrators, unless otherwise indicated, for whom a teaching certificate is required as a basis for employment.

Temporary Teacher - a teacher employed to fill a position designated as temporary or experimental or to fill a vacancy which occurs after the opening of school because of unanticipated enrollment or because of the death, disability, retirement, resignation or dismissal of a permanent or probationary teacher, or one on leave of absence.

Vacating a Position - is a procedure for retention of the position but not filling it for a period of time.

REDUCTION IN FORCE

The 1973 Oregon Legislative Assembly amended the Fair Dismissal Law to provide in ORS 342.865(1)(j) the reasons for dismissal due to reduction in force. The language later was altered during the 1981 session of the legislature by the passage of ORS 342.934 which deleted the 1973 provisions. (See Appendix A.) Similar revision could be enacted by the 1983 Legislature.

Nothing in this new language is intended to interfere with the right of a district to discharge, remove or fail to renew the contract of a probationary teacher pursuant to ORS 342.835.

The provisions of the 1981 statutes allow a reduction in force (RIF) for the following reasons:

> (1) The district's inability to levy a tax sufficient to provide funds to continue its educational program at its anticipated level or (2) resulting from the district's elimination or adjustment of classes due to administrative decision.

There are questions as to meaning, use and procedures which are not yet answered and may require review by the courts. School boards and administrators are strongly advised to seek legal advice in developing district policies and procedures, or prior to making any reductions in force decision or giving any notice.

*NOTE Layoff and RIF are frequently used interchangeably. In How Arbitration Works, Frank and Edna Elkouri state that ". . . the term 'layoff' must be interpreted to include any suspension from employment arising out of a reduction in the work force. . . ." Robert's Dictionary of Industrial Relations defines a reduction in work force as a layoff. RIF does not intend permanency when initially implemented.

School district boards should seek advice and counsel of legal advisors and adapt any of the suggestions which are found in this publication to local conditions and needs before their formal acceptance. Affected employees should be encouraged to seek advice as needed.

DEVELOPING A PLAN

The district may want to consider the following when it does not have reduction in force or layoff and recall articles in its collective bargaining agreements, or when supplements to those agreements are needed, when a policy and procedures are first developed, or to cover those not in a bargaining group.

1. The development procedure should be consistent with the manner in which other district policies are developed.

2. A suggested plan should be presented to the board on schedule, deliberated on by the board at open meeting, and acted upon at an early date. (See Appendix C for model policies and procedures.)

3. The plan should provide for its review, evaluation and revision.

4. The plan, when adopted, should be disseminated widely to all staff members and to the public through the usual media channels of the district.

5. Care should be taken to avoid conflicts between any district plan and the Oregon statutes, rules and regulations and court decisions, the current collective bargaining agreements, and other district policies which may be in effect and may need change. It is important to provide only one process for arbitration as it relates to these issues.

6. The application of the policy and procedures should provide equitably for all classes of employees: classified, certificated and management personnel.

7. The plan and procedures should clearly indicate that the identification of a vacancy is an administrative decision. Decisions on the positions to be terminated and those to be vacated but retained for further use, and the transfer of staff already employed to meet district and staff needs should be completed prior to the application of the procedures for layoff and recall, or termination.

8. The plan should make clear the elimination and vacating of positions. The former involves those that the district is dropping which are not expected to be filled at a later date, due to either reduction in enrollment or changes in instruction programs and

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services. The second involves the retention of the position with the expectation that it will be filled as soon as conditions change and it is possible to do so in an orderly manner. These involve the types of positions in which recall plays a part.

9. The district should develop and make known to staff and encourage current employees to consider alternatives to elimination and layoff such as early retirement, sabbatical and other leaves, and part-time assignments. In the latter case, care must be given to providing appropriate protection to employees who agree to part-time employment; i.e., part of a day, a portion of the week or term, etc.

   The difference between fifty percent or more and less than fifty percent should be made clear. The advice of the district legal advisor should be followed in developing these plans.

10. It is extremely important that both the plans developed and the actual procedures provide for the highest level of "humane treatment" of employees. The entire concept and the process is one which involves high levels of stress and uncertainty. Every effort should be made to counsel and assist all employees through the decision-making period. It is important to be sure that all employees are informed of the process, their rights, the timeline that is involved and their status in the "bumping" process.

11. An extremely important factor in decisions about reduction in staff is the early identification and regular updating of the financial data that is used in the decision-making process. It is desirable that staff be regularly informed of these matters. Cash Flow is complicated, but this is essentially an administrative matter, not personnel. Administrators should develop a process for identifying exactly when cash flow into the district may be expected.

12. A further consideration in any plan deals with the relationship of layoff and unemployment rights as provided by the state or others. The district may wish to provide for counseling for employees on these matters, with information about the duration and the amount of help, and the location of employment offices serving the area. (See Appendix B.)

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13. The plan and the procedures should clearly indicate that the board will expect and will consider proposals from the district administration before making decisions on layoff and recall, and the other concerns related thereto.

NOTE: The following pages give attention to a number of these concerns, but not to all of them. District plans should consider them, however, and provide for each in a manner appropriate to the district and the situation.

FACTORS FOR CONSIDERATION

Equal Educational Opportunity. There are many factors which must be considered in any plan for a reduction in personnel. Overriding all other considerations are needs of children and of the district program designed to best provide for meeting these needs.

Foremost among the factors are the rules of the State Board of Education which require the provision of equal educational opportunity. This means that the program of the district, both the formal classroom and the special activities, must provide equal opportunities for all students.

Equal Employment Opportunity (Affirmative Action). A second major concern is the impact of equal employment opportunity. The district plan must be developed to assure that the staff is representative of the population of the county in which the district is located. Equal opportunity must be provided for employment, advancement and retention, without regard to race, national origin, religion, sex, age, handicap, or marital status. These matters must be included in decisions on retention and/or layoff when reduction in personnel is required.

Student Activities. A third factor that relates to the needs of students has to do with the employment and assignment of "coaches" for the various sports and other activities. The offerings must be equal for male and female students. This matter must be considered when reduction in personnel is considered.

State Standards. It will be important to consider the requirements of state standards for public elementary/secondary schools, as adopted by the State Board of Education. Most of the factors listed here are found in these standards, but there are also a number of additional concerns. These include program planning based on needs assessments and goal setting. The decisions of the district designed to meet these standards must be considered in employee changes.

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Position Descriptions. A position description for each type and kind of position in the district, for every employee including administrators, is of great importance when making decisions on quality of individual performance and the services which must be provided to students.

The position description is basic to the implementation of the equal employment opportunity plan, to the inservice and the staff evaluation programs. For these reasons, it is also a fundamental concern when there are decisions required involving reduction in personnel.

It is also desirable to develop and follow position descriptions for the various kinds of special activity responsibilities which may be assigned staff members, including student athletics, music, art and various "club" programs.

Fair Dismissal Law. The school district shall make every reasonable effort to transfer teachers of courses scheduled for discontinuation to other positions for which they are qualified. (ORS 342.934(2))

Collective Bargaining Agreements. As pointed out previously, the terms of the current agreements with employees may deal with reduction in force or layoff and recall and related matters. These terms must be observed in any district plan regarding reduction in force and/or layoff and recall.

There may be other considerations for reduction in force which must be weighed at the local district level. The factors listed above represent the fundamental considerations for administrators and board members, after it is determined that a change in staff size is required.

Competence - Merit - Seniority (See Definitions.) These must be considered in plans for layoff and discharge from employment.

DETAILS OF THE PLAN

Determination of Need. The first step in a layoff or reduction in force plan is to establish a clear procedure for determining the need for such action. This may be for one or more of the reasons given on page 4. To determine the need:

1. The administration should be able to document the conditions which the board must consider, with facts as to the need for a reduction, and alternative plans for meeting that need.

School district boards should seek advice and counsel of legal advisors and adapt any of the suggestions which are found in this publication to local conditions and needs before their formal acceptance. Affected employees should be encouraged to seek advice as needed.

2. The board should announce that the matter is to be considered at a regular or special open meeting.

3. The board should carefully consider all the factors and the alternatives, and arrive at a decision.

4. The decision may indicate the number of positions which may be eliminated, and give general instructions to administrators as to the anticipated reduction in funds or program changes.

Decision as to the Position(s) Eliminated. The board then may proceed to a consideration of the positions and activities which may be removed from the district programs, based on the contents of the adopted plan, as proposed by the administration.

1. Equal opportunity requirements should receive consideration, as provided in ORS 343.934(3)(a)(A) and (B).

2. Major consideration should be given to the required courses for high school graduation and others needed to meet state standards.

3. The effect on class size should be considered when the board determines that a reduction in staff will occur.

4. The positions or activities subject to elimination should be announced to the staff and then to the public, along with the plans developed as outlined below.

Procedure for Reducing Personnel. The district board shall expect the administrative staff to proceed to identify specific programs and positions which may be dropped. Procedure would include:

1. Identification of the specific positions which may be dropped by school, grade, subject or department, and by special activity. The eventual decision should be based on a comparison of staff on a district-wide basis.

    a. The decisions should consider the programs and services which must be provided for the school and/or district to be standard.

    b. The decisions should consider the unique needs of students in the district and the individual schools.

    c. The decisions should include proper attention to the needs of handicapped and avoid the elements of discrimination.

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2. Alternatives to layoff or reduction of employees should be identified so that current employees have options. Consideration should be given to identifying:

   a. Those who will retire and others who may be planning or willing to take early retirement.

   b. Those who may be planning or will be able to plan for sabbatical or other leaves during the coming year, due to layoff.

   c. Those who actively seek or may be encouraged to seek voluntary transfer and who otherwise may be qualified for positions which will be retained.

   d. Those who will be resigning for whatever reason.

   e. Those who may request or will accept part-time assignments, or will share an assignment with another qualified employee.

3. Details of the plan for deciding on those to be <u>retained</u> should be established.

   a. After the administrative staff has identified the programs and services and/or positions to be dropped, as well as the persons who will not return to district service the next year (for the reasons outlined above), the administrative staff should then study the alternative assignments for the remaining employees. Consideration should be given to affected staff members who may be qualified to work in positions which are retained, as follows:

      (1) Determine whether teachers to be retained hold proper certification to fill the remaining positions.

      (2) Determine seniority of employees to be retained.

      (3) Determine competence and merit of employees, if necessary.

      A school district may retain an employee with less seniority than one being released when the district has determined that the one being retained has more competence or merit than the one with more seniority who is being released.

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An administrator may retain status and seniority as a permanent teacher and voluntarily may return to teaching in a reduction in staff situation. However, an administrator who is not a permanent teacher in the district is not eligible to become a nonadministrative teacher in the district if the effect is to displace a nonadministrative permanent teacher.

b. The remaining employees, as determined above, should be listed by positions, by special assignments, and in such other categories as necessary for the district. It may be useful to list them by categories, with indicators of other factors which may be considered. (See pages 7 and 8.)

c. Remaining employees may be placed only in positions for which they are qualified.

4. Notification.

a. Those not retained must be considered as subject to the district's layoff and recall or RIF procedure, nonrenewal, or dismissal as provided by law.

b. The requirements of law must be followed as employees are informed of employment status for the coming year.

c. The district should have a plan that provides for a procedure for employee appeals, to include the following (ORS 342.934(7):

"An appeal from a decision on reduction in staff or recall under this section shall be by writ of review to the circuit court for the county in which the headquarters of the school district is located or by a procedure mutually agreed upon by the employe representatives and the employer. If a procedure by mutual agreement is chosen, the results shall be final."

Recall to Employment. There may be occasions when an employee who has been laid off may be offered the opportunity to return to employment in the district. This may occur when a resignation, either prior to or after school starts in the fall, creates a position for which the person is qualified. It may also occur: (1) when the financial condition of the district improves, perhaps through a late vote on the district budget; (2) through a renewal of state or federal special project funds; or (3) for some other special reason that creates a vacancy.

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1. The procedures for recall should be developed as provided in ORS 342.934(6):

   "a. In consultation with its employees or, for those employes in a recognized collective bargining unit, with the exclusive bargaining representative of that unit, each school district shall establish a procedure for recalling teachers to employment in the district who have been released because of a reduction in staff.

   b. The procedure so established shall define the criteria for recall and the teacher shall have the right of recall thereunder for two years after the last date of release by the district unless waived as provided in such procedure by rejection of a specific position.

   c. A permanent teacher who is recalled shall retain the permanent status obtained before the release.

   d. A probationary teacher who is recalled shall have years taught for the district counted as if the employment had been continuous for purposes of obtaining permanent status."

The provisions of the recall plan may include consideration for the following:

1. Laid off employees interested in reinstatement should keep the district informed of their interest and residence and of periods of absence, so that a speedy response may be made to an offer of re-employment.

2. The district administration should maintain an up-to-date list of the positions and services eliminated, of the persons laid off in the priority order listed above, their certification, and of the readiness of such persons to return.

3. The district may maintain and use qualified laid off employees on the district substitute lists.

4. Laid off employees should be contacted and called back to employment according to the priority lists, by categories which were used in determining those to be released, as qualified.

5. After a designated period of time, failure by the person contacted to respond may be accepted as rejection of the offer, and the next person on the list may be approached with an offer of reemployment.

School district boards should seek advice and counsel of legal advisors and adapt any of the suggestions which are found in this publication to local conditions and needs before their formal acceptance. Affected employees should be encouraged to seek advice as needed.

6. If and when conditions improve so that a substantial number of employees may be recalled, every effort should be made to contact all those who were laid off so that their desires may be determined and offers made for such positions and activities as they may be qualified to fill.

7. The district may wish to set a time after which the recall procedure will no longer apply. A minimum of two years is required unless increased by mutual agreement.

BOARD ADOPTION AND DISSEMINATION OF THE PLAN

The district administrative personnel, and others as appropriate, having considered all the factors listed above then will be ready to present a proposed plan to the school board.

1. The board should carefully consider all the factors and the alternatives and adopt a plan. If an ad hoc committeee is appointed to report on such a plan, the report should be presented at this time.

2. The board should express its decision in a policy statement and implementation plan. The plan should clearly state the responsibilities of the board and the district administrator, and the rights and responsibilities of all employees.

3. The plan and procedures, as adopted, should be placed in writing and copies provided each employee of the district and to all interested members of the public.

SUMMARY

In summary, this publication deals with a sensitive and difficult process of reducing the numbers of employees in a school district in an humane and legal manner.

It cannot be stressed enough that school districts boards should seek advice and legal counsel before implementing reduction in force--layoff and recall procedures so that this process can be implemented in an orderly and professional manner. When everyone involved in the reduction in force process has a clearly defined procedure to follow, stress and uncertainty can be kept to a minimum: while the statutes refer primarily to permanent teachers in a fair dismissal district, it is strongly suggested that district policy and procedures provide for all employees, both certificated and classified.

RESOURCES

Printed Material

Personnel Management Advisory Committee Publications

- Employment Procedures (1979)
- Personnel Guidelines and Model Policies (Revised, 1978)
- Evaluation Guidelines for School Personnel (1979)
- School Employees Retirement (1976)
- Suggested Calendar of Yearly School Board Activities, 1981-1982

Contacts

- Oregon Department of Education - Milt Baum
- Oregon School Board Association - Chris Dudley
- Oregon Education Association - Ted Romoser
- Fair Dismissal Appeals Board - Milt Baum
- Teacher Standards and Practices Commission - Richard Jones
- Employment Relations Board - John Vale
- Local School District Personnel Officers

APPENDIX

A. The Statute ORS 342.934 17

B. Locations of Oregon Employment offices 19

C. Model Policies/Procedures (to be assembled) 21

The Statute ORS 342.934

342.934 Procedure for reduction of teacher staff due to funding or administrative decision. (1) The procedure for reduction in teacher staff resulting from the district's inability to levy a tax sufficient to provide funds to continue its educational program at its anticipated level or resulting from the district's elimination or adjustment of classes due to administrative decision shall be as provided in this section. However, nothing in this section is intended to interfere with the right of a fair dismissal district to discharge, remove or fail to renew the contract of a probationary teacher pursuant to ORS 342.835.

(2) The school district shall make every reasonable effort to transfer teachers of courses scheduled for discontinuation to other positions for which they are qualified.

(3) In determining teachers to be retained when a school district reduces its staff under this section, the school district shall:

(a) Maintain the affirmative action policy of the district, including at the minimum maintaining the following:

(A) The approximate proportion of women to men and minorities to nonminorities in administration; and

(B) The approximate proportion of men, women and minorities in teaching positions in which these persons are underrepresented. Men, women or minorities will be considered underrepresented when the percentage of teaching positions held by members of each such group in a specific grade level or activity falls below the percentage of such group in the population of the county in which the district is located.

(b) Determine whether teachers to be retained hold proper certification to fill the remaining positions.

(c) Determine seniority of teachers to be retained.

(d) Determine competence and merit of teachers, if necessary, under subsection (4) of this section.

(4) If a school district desires to retain a teacher with less seniority than a teacher being released under this section, the district shall determine that the teacher being retained has more competence or merit than the teacher with more seniority who is being released. However, nothing in this subsection is intended to limit the operation of paragraph (a) of subsection (3) of this section relating to affirmative action.

(5) An administrator shall retain status and seniority as a permanent teacher and voluntarily may return to teaching in a reduction in staff situation. However, an administrator who was never employed as a teacher in the district shall not be eligible to become a nonadministrative teacher in the district if the effect is to displace a nonadministrative permanent teacher.

(6) In consultation with its employes or, for those employes in a recognized collective bargaining unit, with the exclusive bargaining representative of that unit, each school district shall establish a procedure for recalling teachers to employment in the district who have been released because of a reduction in staff. The procedure so established shall define the criteria for recall and the teacher shall have the right of recall thereunder for two years after the last date of release by the district unless waived as provided in such procedure by rejection of a specific position. A permanent teacher who is recalled shall retain the permanent status obtained before the release. A probationary teacher who is recalled shall have years taught for the district counted as if the employment had been continuous for purposes of obtaining permanent status.

(7) An appeal from a decision on reduction in staff or recall under this section shall be by writ of review to the circuit court for the county in which the headquarters of the school district is located or by a procedure mutually agreed upon by the employe representatives and the employer. If a procedure by mutual agreement is chosen, the results shall be final.

(8) As used in this section:

(a) "Competence" means the ability to teach a subject or grade level based on recent teaching experience or educational attainments, or both, but not based solely on being certificated to teach a subject or grade level.

(b) "Merit" means the measurement of one teacher's ability and effectiveness against the ability and effectiveness of another teacher.

[1981 c.569 §3]

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REDUCTION IN FORCE/RECALL

Certificated

A. Reduction in Force

If the board determines a reduction in force is necessary, such reductions shall be made in accordance with the following procedures:

1. The district shall use certification and seniority in determining the order of layoff.

2. Seniority continues to accumulate while a teacher is under contract and receiving salary. Seniority stops and is lost when a teacher resigns or is dismissed.

3. No permanent teacher shall be laid off if certified to teach a course being taught by a probationary teacher.

4. The district shall make every effort to transfer teachers from courses scheduled for discontinuance to other positions for which they are certified.

B. Reverse Order

When reduction in force is implemented, the district shall lay off unit members in reverse order of hire.

C. Recall

During the layoff period, the district will institute a recall procedure which will ensure that teachers will be recalled in the reverse order of layoff. Recall rights shall continue for two years from time of layoff. Recall rights shall cease when a laid off teacher resigns or accepts employment with another district.

REDUCTION IN FORCE/RECALL

Classified

A. Reduction in Force

1. If the board decides on a reduction in force, the employee with the least seniority in the job classification being eliminated shall be reduced first. Seniority shall be determined as the total length of service beginning with the initial start date within the classification. Employees with the same start date shall have seniority determined by their total hours of service, excluding overtime, since the initial start date within the classification.

2. If the board determines a reduction is necessary, the layoff shall be in order of seniority within classifications, as defined, within the following general areas:

   a. Custodial, Custodial Aide, Security, Warehouse, Delivery, Laundry
   b. Maintenance
   c. Food Service
   d. Bus Driving
   e. Bus Maintenance--Parts, Tire, Lube, Fuel Personnel, Mechanic
   f. Secretarial
   g. Bookkeeper Clerk, Bookeeper Accounts Payable
   h. Library Aide, Teacher Aide, Library Media Clerk, Teacher Technician
   i. Nurse
   j. Press Operator

3. An employee whose position is scheduled for discontinuance shall be assigned to a position within a classification if the employee was assigned previously to that classification and if the employee has greater seniority than another employee presently holding a position within the classification.

4. The district shall notify the Association, in writing, not less than ten (10) working days prior to any reduction in force. The written notice shall also set forth the names of persons who are to be affected by the board's decision, along with the date of hire within classification of each employee whose position is being affected. At the same time notice is provided to the Association, the district shall also notify those employees affected.

B. Reverse Order

When reduction in force is implemented, the district shall lay off members of the bargaining unit in order of seniority (least senior first) by classification.

C. Recall

During the layoff period, the district will ensure that employees will be recalled in the reverse order of layoff within all classifications in which the employee has seniority. Recall rights within classification shall continue for one (1) year from the time of layoff. A second year will be granted upon written request from the employee. Employees with the same start date shall have seniority determined by the total number of hours of service, excluding overtime, since the initial start date within the classification. Recall rights shall cease when a laid off employee resigns. Seniority stops and is lost when an employee resigns or is dismissed.

D. Active employees may apply for openings as provided for in the agreement.

REDUCTION IN STAFF

Classified

1. The district reserves the right to reduce staff due to economic, district needs or other factors deemed necessary by the board of education. When such reduction becomes necessary, qualifications for similar assignment, district seniority, department seniority, and merit shall be factors in the decision making process. Those factors shall be considered in the order listed.

   If within 12 months of separation, the work force is increased, personnel shall be considered for rehire in the inverse order in which they were laid off using the same criteria and order: qualifications for positions needed, district seniority and merit.

2. Seniority shall be defined as the total length of continuous employment within the district as a classified employee. For the purpose of computing seniority, all authorized paid leave shall be considered as time worked. Employees who are laid off as a result of a reduction in positions, and who are subsequently reinstated, shall retain their full seniority except for the period of layoff.

3. The board agrees that before cafeteria, custodial or student transportation services are contracted out to outside agencies, the president of the bargaining unit shall be notified 30 days in advance of such action.

REDUCTION IN STAFF

Certificated

1. The district shall determine when reductions in force are necessary and which programs shall be affected.

2. The administration will notify the Association in writing at least seven (7) days prior to formally recommending to the board of directors that a reduction in force take place.

3. The administration shall review with the Association the process of determining which individuals will be affected by the reduction.

4. Any teacher who is to be laid off will be so notified in writing as soon as practical but in no case less than thirty (30) days prior to the effective date of the layoff. Such notice will state the effective date and the reason for the layoff.

5. The decision of the board will be put in writing and sent to each staff member whose position is to be affected with a copy to the Association.

6. Staff shall be reduced according to all legal requirements, certification and seniority.

7. Only those certificates dated prior to the board's decision to RIF shall be deemed valid.

8. A person whose current position is being eliminated may "bump" a person with less seniority provided an endorsement or certificate is held.

9. Seniority shall be defined as the employee's total continuous length of time since a contract for service was signed by the employee. For the purpose of this article, district-approved unpaid leaves shall not be considered a break in seniority; however, no seniority shall accrue while on such leave.

10. With the approval of the insurance carrier, a laid off teacher shall be allowed to continue under the district insurance program for up to six (6) months provided that the district shall be reimbursed in advance on a month by month basis for the cost of the premiums.

Recall

1. The teacher shall provide the district personnel office with current address information at the time of the layoff.

2. If within twenty-four (24) months of layoff, vacancies occur within the district for which laid off teachers qualify, such employees shall be recalled on the basis of reverse order of the layoff subject to certification and seniority.

3. In the event of a recall, the district shall notify a teacher who has expressed a desire to return to the district of the recall by certified mail (RRR) or in person, sent to the last address given by the teacher to the district personnel office.

4. Teachers will have seven (7) calendar days from receipt of such notice to notify the district in writing of intent to return within sixty (60) calendar days of the date of such notice. Failure of the teacher to so respond within the time herein specified shall terminate such teacher's right to recall.

5. Part-time teachers shall be placed on the district recall list. If no full-time teacher is qualified for a full-time position the district shall offer the position to a qualified part-time teacher. In no case shall a part-time teacher be offered a full-time position if a qualified full-time teacher is on the RIF list.

6. No one outside the bargaining unit shall be hired until the recall procedures are exhausted, except when no one on the recall list has the necessary qualifications.

7. A laid off teacher shall have the right, upon request, to be placed on the district substitute list.

8. During a layoff, teachers shall retain, but not accrue, seniority and benefits.

9. Any probationary teacher who has been dismissed or nonrenewed pursuant to ORS 342.835 for reasons other than lack of funds or reduced enrollment shall not be subject to the provisions of this article.